

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED MAR 29 1940

No. 7575

Joseph W. Stewart

CLERK

**In the United States Court of Appeals for the
District of Columbia**

JANUARY TERM, 1940

582

EDMOND C. FLETCHER, APPELLANT

vs.

JOHN P. McMAHON, KARL KINDLEBERGER, ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES JOHN P. McMAHON, KARL
KINDLEBERGER

DAVID A. PINE,
United States Attorney.

JOHN L. LASKEY,
Assistant United States Attorney.

Submitted

*Before Groner,
Lusk, and
O'Donoghue*

JUDGE D. LAWRENCE GRONER
UNITED STATES COURT OF APPEALS
WASHINGTON, D. C.

DEC 12 1940

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vs.

JOHN P. McMAHON, KARL KINDLEBERGER, ET AL., APPELLEES

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA*

**BRIEF FOR APPELLEES JOHN P. McMAHON, KARL
KINDLEBERGER**

STATEMENT

The case is before this court on appeal from the order of the lower court sustaining the separate motions of the appellees to dismiss the amended complaint. By the amended complaint, the appellant sought in the lower court to recover damages in the amount of \$50,000 for an alleged false arrest and imprisonment. It appears from the amended complaint that the matters complained of by the appellant occurred during the course of proceedings in the Police Court of the District of Columbia, known as Case No. 388087, in which the appellant was charged with the violation of Section 824 of the District of Columbia Code as Amended by Act of March 4, 1935, a misdemeanor known as "Unlawful Entry."

SUMMARY OF ARGUMENT

I. The Police Court of the District of Columbia had jurisdiction to try the appellant for the offense charged.

II. The appellee McMahon was, at the time of the occurrence complained of in the amended complaint, a judge of the Police Court of the District of Columbia, and with respect to the occurrence complained of he was acting in the discharge of his judicial functions and is, therefore, not personally liable or subject to suit in this action.

III. The appellee Kindleberger was, at the time of the occurrences complained of, an Assistant United States Attorney in and for the District of Columbia, and since the acts complained of were done in the course of his official duties, he is not personally liable or subject to suit in this action.

ARGUMENT

I

The Police Court of the District of Columbia had jurisdiction to try the appellant for the offense charged

The information filed against Edmond C. Fletcher in the Police Court charged that the defendant "did then and there, without lawful authority, enter a certain private dwelling, to wit, 4132 Military Road, North West, in the District of Columbia, against the will of the lawful owner thereof, to wit, the Home Owners' Loan Corporation, a body corporate, or its duly authorized agent; and being therein did refuse to quit the same on the demand of the said lawful owner thereof, or its duly authorized agent" (R. 4). The appellant claims that the Police Court was without jurisdiction to put him on trial upon the charge contained in the information. In support of this contention, he alleges (1) that the information contains certain technical defects and (2) that the trial of the charge contained in the information required that the Police Court "try title to real estate" which it was without jurisdiction to do.

As to the first point, it would seem that the averment of facts in the information was sufficiently certain and specific to fairly inform the defendant of the crime intended to be alleged and to make the judgment a complete defense to a

second prosecution for the same offense. Tested by this rule, it would seem that the information was sufficient.

Simpson v. U. S., 241 F. 841, certiorari denied, 245 U. S. 664, 62 L. Ed. 537.

The prosecution of the appellant in the Police Court of the District of Columbia was brought under Title 6, Chapter 3, Section 57, Supp. 3, District of Columbia Code, which provides:

Any person who, without lawful authority, shall enter or attempt to enter, a private dwelling or building against the will of the lawful occupant thereof, or being therein, without lawful authority to remain therein, shall refuse to quit the same on the demand of the lawful occupant thereof; or any person who, without lawful authority, shall enter, or attempt to enter, an unoccupied private dwelling or building against the will or consent of the lawful owner thereof, or his duly authorized agent, or being therein, without lawful authority to remain therein, shall refuse to quit the same on the demand of the lawful owner thereof, or his duly authorized agent, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$50 or imprisonment in the jail for not more than six months, or both, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1324, c. 854, sec. 824; Mar. 4, 1935, 49 Stat. 37, c. 23.)

Section 152 of Title 18 of the District of Columbia Code provides as to the jurisdiction of the Police Court of the District of Columbia:

The said court shall have original jurisdiction concurrently with the Supreme Court of the District, except where otherwise expressly herein provided, of all crimes and offenses committed in the said District not capital or otherwise infamous and not punishable by imprisonment in the penitentiary, except libel, conspiracy, and violation of the postoffice and pension laws of the United States; and also of all offenses against munici-

pal ordinances and regulations in force in the District of Columbia. The said court shall also have power to examine and commit or hold to bail, either for trial or further examination, in all cases, whether cognizable therein or in the Supreme Court of the District. (June 17, 1870, 16 Stat. 153, c. 133; Mar. 3, 1891, 26 Stat. 848, c. 536; Mar. 3, 1901, 31 Stat. 1196, c. 854, sec. 43.)

The offense with which appellant was charged is expressly defined to be a misdemeanor and is not punishable by imprisonment in the penitentiary, but by a fine not exceeding \$50, or by imprisonment in the jail for not more than six months, or both, in the discretion of the Court. The Police Court, therefore, was and is vested with jurisdiction in case of an unoccupied private dwelling or building to ascertain and determine who is the lawful occupant, in order to find whether the entry or attempted entry was against the will of the occupant or whether the person charged is in possession without lawful authority and refused to quit at the demand of the lawful owner. It would also seem that the Police Court has jurisdiction in the case of an unoccupied private dwelling or building to determine who is the lawful owner or his duly authorized agent in order to determine whether the entry or attempted entry into the unoccupied private dwelling or building was against the will or consent of the lawful owner thereof or his duly authorized agent or whether the person charged was in the dwelling or building without lawful authority to remain therein and refused to quit the same on the demand of the lawful owner thereof or his duly authorized agent.

If such findings on the part of the Police Court are a "trying of title to real estate," the Court, under Section 57, Title 6, Chapter 3, Supplement 3, and Section 152, Title 18, Chapter 4 of the District of Columbia Code is expressly vested with jurisdiction to "try title to real estate," in such a proceeding."

The question as to the jurisdiction of the Police Court in the proceedings made the basis of the amended complaint was presented to this court by petition for a writ of error to the Police Court of the District of Columbia. This petition was denied on April 4, 1938, and appellant's petition for reconsideration was denied on May 6, 1938. This court may take judicial notice of

and give effect to its own records in another but interrelated proceeding.

Booth v. Fletcher, 101 F. (2d) 676, 69 App. D. C. 351.

After denial of his petition for reconsideration of the denial of the petition for writ of error to the Police Court of the District of Columbia, appellant petitioned the Supreme Court of the United States for a writ of certiorari to this court. On October 10, 1938, this petition was denied. 305 U. S. 595. The report of the denial of the appellant's petition for writ of certiorari contained in United States Law Week, October 11, 1938, Volume 6, No. 6, Page 26, indicates that the Supreme Court denied appellant's motion for leave to proceed *in forma pauperis* for the reason that the court, upon examination of the papers submitted found no ground upon which the writ of certiorari should be issued.

II

The appellee McMahon was, at the time of the occurrence complained of in the amended complaint, a judge of the Police Court of the District of Columbia and with respect to the occurrence complained of he was acting in the discharge of his judicial functions and is, therefore, not personally liable or subject to suit in this action

It is apparent from the complaint that the acts of the appellee McMahon were acts performed in the course of his judicial duty as a judge of the Police Court in the District of Columbia. It is well settled that consideration of public policy and convenience demand for judges immunity from civil suits and damages alleged to have been caused by acts done in the performance of their judicial functions.

Randall v. Brigham, 7 Wall. 523, 19 L. Ed. 285.

Bradley v. Fisher, 13 Wall. 335, 20 L. Ed. 646.

Alzua v. Johnson, 231 U. S. 106, 58 L. Ed. 142.

Spalding v. Vilas, 161 U. S. 483, 40 L. Ed. 780.

Yaselli v. Goff, 12 F. (2d) 396.

Fletcher v. Wheat, 100 F. (2d) 432, 69 App. D. C. 255.

In the case of *Yaselli v. Goff*, *supra*, the plaintiff complained of the defendant for having, as a special assistant to the At-

torney General, falsely and maliciously and without reasonable or probable cause, charged the plaintiff before the grand jury in the United States District Court for the Southern District of New York. The plaintiff further alleged that on the trial of the charges against him contained in the indictment so obtained, he was acquitted by direction of the court. In sustaining the action of the lower court in dismissing the plaintiff's complaint, the court said, at Page 399:

There are weighty reasons why judicial officers should be shielded in the proper discharge of their official duties from harassing litigation at the suit of those who think themselves wronged by their decisions and that injustice has been done. A defeated party to a litigation may not only think himself wronged, but may attribute wrong motives to the judge whom he holds responsible for his defeat. He may think that the judge has allowed passion or prejudice to control his decision. To allow a judge to be sued in a civil action on a complaint charging the judge's acts were the result of partiality, or malice, or corruption, would deprive the judges of the protection which is regarded as essential to judicial independence. It is not in the public interests that such a suit should be maintained; and it is a fundamental principle of English and American jurisdiction that such an action cannot be maintained.

An examination of the opinion in the *Yaselli* case which was affirmed in 275 U. S. 503, 72 L. Ed. 395 shows that the action of the lower court in dismissing the complaint as to the appellee McMahon was right. In the course of the opinion, the Circuit Court of Appeals reviewed the authorities bearing on civil responsibility of judicial officers for acts performed in the course of their official duties. The authorities reviewed indicate that appellant's action is not well-founded.

III

The appellee Kindleberger was, at the time of the occurrences complained of, an assistant United States attorney in and for the District of Columbia, and since the acts complained of were done in the course of his official duties, he is not personally liable or subject to suit in this action

Appellant, according to the amended complaint, bases his suit against the appellee Kindleberger on his alleged action in connection with the issuance of a warrant of commitment against the appellant which was issued out of the Police Court of the District of Columbia by the appellee McMahon, one of the judges of that Court. This commitment was issued following conviction, in the Police Court, of the appellant of a violation of Section 824 of the District of Columbia Code as amended by Act of March 4, 1935, Section 57, Title 6, Supp. 3, of the code of the District of Columbia. Under this commitment, appellant was taken into custody and confined in the jail from January 16, 1939, to and including March 6, 1939.

Although appellee Kindleberger is sued personally, it will be observed from paragraph 2 of the amended complaint (R. 2) that appellee is therein designated as Assistant United States Attorney for the District of Columbia. Fairly construed, the amended complaint appears to charge that any acts done by the appellee Kindleberger were done in the course of his official duties.

The same considerations of public policy and convenience, which demand for judges immunity from civil suits and damages arising from acts done in the performance of their judicial functions, extends to acts of executive officers in the matter of their official duties.

Spalding v. Vilas, 161 U. S. 483, 40 L. Ed. 780.

Yaselli v. Goff, 12 F. (2d) 396.

Fletcher v. Wheat, 100 F. (2d) 432, 69 App. D. C. 255.

Standard Nut Margerine Co. v. Mellon, 72 F. (2d), 557, 63 App. D. C. 339.

Cooper v. O'Connor, 99 F. (2d) 135, 69 App. D. C. 100.

CONCLUSION

Appellant has shown no reasons, legal or equitable, why these appellees should be compelled to respond to him in damages, or why they should be compelled to answer the allegations contained in his amended complaint. On the contrary, the amended complaint shows that the actions of these appellees of which the appellant complains were actions done in the course of their official duties for which they are not required to answer in a civil action for damages. The amended complaint further shows that the proceedings against the appellant in the Police Court of the District of Columbia were properly conducted, concerned matters within the jurisdiction of the court, and that his conviction was in all respects valid. It is, therefore, respectfully submitted that the action of the lower court in dismissing the amended complaint was correct and should be affirmed.

Respectfully submitted.

DAVID A. PINE,
United States Attorney.

JOHN L. LASKEY,
Assistant United States Attorney.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

JANUARY TERM, 1940

No. 7575

FILED MAR 28 1940

EDMOND C. FLETCHER,

Joseph W. Stewart

CLERK

Appellant,

VS.

JOHN P. McMAHON, KARL KINDLEBERGER,
AND THOMAS M. RIVES,

Appellees.

BRIEF ON BEHALF OF THOMAS M. RIVES, *Appellee*

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1940

No. 7575

EDMOND C. FLETCHER,

Appellant,

vs.

JOHN P. McMAHON, KARL KINDLEBERGER,
AND THOMAS M. RIVES,

Appellees.

BRIEF ON BEHALF OF THOMAS M. RIVES, *Appellee*

STATEMENT OF THE CASE

The facts of this case are substantially set forth in appellant's brief and will not be stated here.

SUMMARY OF ARGUMENT

I. The Police Court had jurisdiction of the offence of forcible entry and detainer.

II. A commitment valid upon its face is a complete defense to an action for false imprisonment.

ARGUMENT

I.

The Police Court had jurisdiction of the offence of forcible entry and detainer.

Section 824 of the Code of Law of the District of Columbia,

(1)

as amended by the Act of March 4, 1935, (sec. 57, Title 6, D. C. Code of 1929, Supp. V) reads as follows:

“Any person who, without lawful authority, shall enter, or attempt to enter, a private dwelling or building against the will of the lawful occupant thereof, or being therein, without lawful authority to remain therein, shall refuse to quit the same on the demand of the lawful occupant thereof; or any person who, without lawful authority, shall enter, or attempt to enter, an unoccupied private dwelling or building against the will or consent of the lawful owner thereof, or his duly authorized agent, or being therein, without lawful authority to remain therein, shall refuse to quit the same on the demand of the lawful owner thereof, or his duly authorized agent, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$50 or imprisonment in the jail for not more than six months, or both, in the discretion of the court.”

Sec. 43 of the Code of 1901, (Section 152, Title 18, 1929 Code) states the jurisdiction of the Police Court to be as follows:

“The said court shall have original jurisdiction concurrently with the Supreme Court of the District, except where otherwise expressly herein provided, of all crimes and offenses committed in the said District not capital or otherwise infamous and not punishable by imprisonment in the penitentiary, except libel, conspiracy, and violation of the post-office and pension laws of the United States; and also of all offenses against municipal ordinances and regulations in force in the District of Columbia. The said court shall also have power to examine and commit or hold to bail, either for trial or further examination, in all cases, whether cognizable therein or in the Supreme Court of the District.”

It is respectfully submitted that prosecutions for violations of Section 824 of the Code, as amended, were clearly within the jurisdiction of the Police Court. The maximum punishment provided for the violation of that section is a fine of not exceeding \$50.00 or imprisonment in jail for not more than six months, or both, in the discretion of the court.

The appellant contends that the Police Court was without jurisdiction of the offense for the reason that title to real estate was involved. This, we contend, is unsound. There is nothing in any statute which provides that the Police Court has no jurisdiction over crimes involving title to real estate, or which gives to the District Court of the United States for the District of Columbia exclusive jurisdiction over such crimes.

It is further contended by plaintiff that the Police Court was without jurisdiction for the reason that the Information upon which he was convicted failed to charge him with an offense within the class of cases under the jurisdiction of the Police Court, particularly with an offense under the Act of Congress of March 4, 1935. It is our contention that if the Court had jurisdiction of the subject-matter and of the person of the plaintiff, the alleged insufficiency of the Information would not divest the Police Court of its jurisdiction.

In the case of *Matter of Gregory*, 219 U.S. 210, the Court said:

"The only question before us is whether the Police Court had jurisdiction. A *habeas corpus* proceeding cannot be made to perform the function of a writ of error and we are not concerned with the question whether the information was sufficient or whether the acts set forth in the agreed statement constituted a crime, that is to say, whether the court properly applied the law, if it be found that the court had jurisdiction to try the issues and to render the judgment. *Ex parte Kearney*, 7 Wheat. 38; *Ex parte Watkins*, 3 Pet. 193; *Ex parte Parks*, 93 U.S. 18; *Ex parte Yarbrough*, 110 U.S. 651; *In re Coy*, 127 U.S. 731; *Gon-*

zales v. Cunningham, 164 U.S. 612; *In re Eckart*, 166 U.S. 481; *Storti v. Massachusetts*, 183 U.S. 138; *Dimmick v. Tompkins*, 194 U.S. 540; *Hyde v. Shine*, 199 U.S. 62, 83; *Whitney v. Dick*, 202 U.S. 132, 136; *Kaizo v. Henry*, 211 U.S. 146, 148. * * *

While it is true that case involved a petition for a writ of habeas corpus, we submit the same principle governs the case at bar.

The same questions here presented regarding the lack of jurisdiction of the Police Court were presented to this Court in a petition for a writ of error to the Police Court, which writ of error was denied, whereupon plaintiff filed a petition for a writ of certiorari to the United States Supreme Court, which was denied. *Fletcher v. United States*, 305 U.S. 595.

II

A commitment valid upon its face is a complete defense to an action for false imprisonment.

25 C. J. 473, Section 41, states the law as follows:

“Detention or Restraint under Process—(1)—Valid Process—(a) General Rule. It is a complete defense to an action for false imprisonment that the arrest or detention was by virtue of process, legally sufficient in form, and duly issued by a court or official having jurisdiction to issue it. * * *

So, also, in 11 R. C. L., page 795, Section 8, the law is stated as follows:

“* * * An arrest under a warrant valid in form, issued by a competent authority on a sufficient complaint, is not false imprisonment. * * *

So, also, on page 796, Section 9 of the same volume, it is stated:

"On the other hand, if the court had apparent jurisdiction, that is, if it had general jurisdiction of the subject matter, and the process is fair on its face, the officer incurs no liability in executing such process though the court did not have jurisdiction of the person of the defendant. * * *"

In the case of *Pankewicz v. Jess*, 27 Cal. App. 340, 149 P. 997, the Court said:

"* * * When lack of authority is apparent the officer is not only justified, but it is his duty, not to serve the illegal process; and, if he does so, it is at his peril. The only ground, therefore, upon which an action can be predicated against an officer for executing process is where the lack of authority for its issuance is apparent on its face. * * *"

Also, in the case of *Reisterer v. Lee Sum*, 94 Fed. 343, the Court said:

"* * * The action for false imprisonment does not lie for an arrest made by an authorized officer upon criminal process regular upon its face, and issued by a magistrate having jurisdiction. *Whitten v. Bennett*, 30 C.C.A. 140, 86 Fed. 405; *Carman v. Emerson*, 18 C.C.A. 38, 71 Fed. 264; *Marks v. Townsend*, 97 N.Y. 590. * * *"

CONCLUSION

For the reasons before stated, it is respectfully submitted that the order of the court below was right and should be affirmed.

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